Supreme Court, U.S.
FILED

041135 OCT 20 2004

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

VILASINI NAIR KOTTARAM

Petitioner

V.

BANK LEUMI, USA, et al

Respondents

On Petition For A Writ Of Certiorari
To The US Appellate Court (Second Circuit)

PETITION FOR WRIT OF CERTIORARI

Vilasini Nair Kottaram
Pro Se
54-09 108th Street #1D
Corona, NY 11368
(718) 271-4122

QUESTIONS PRESENTED FOR REVIEW

1. Violations of several sections of Public Law 96-399, Title V and Title VI are alleged in the Petition. The District Court and Appellate Court do not say anything about the violations in their Judgment/Decision; even after submitting sufficient evidence to prove it.

2. NOW THE QUESTION IS WHETHER PUBLIC LAW 96-399, TITLE V AND TITLE VI ARE VALID LAWS TO BE ENFORCED BY THE COURTS ?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1. Bank Leumi, U.S.A.; Joseph A. Sciarillo, Robert M. Cassuto, Julie Sheifetz, George R. Penny Benjamin Frankestein.

All represented by Carol M. Goodman Esq. c/o Herrick Feinstein, LLP, 2 Park Avenue, New York, NY-10016. (212) 592-1400.

2. Maria Rodriguez and Robert G. Fonti

Both represented by Callan, Koster Brady & Brennan, LLP, One Whitehall Street,. 10th Floor, New York, NY-10004. (212) 248-8800.

3. Ramesh C. Vig

Represented by Robert G. Androsiglio, Esq. c/o Radna & Androsiglio, 67 Wall Street, New York, NY 10005. (212) 742-0001.

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JURISDICTION

1. The Petitioner seeks a review of the Federal Appellate Court's (second circuit) Decision entered on August 3, 2004. This Appeal was first submitted on October 20, 2004 and was within the time limit. Because of some technical errors, this Appeal is being submitted, on the Third Time on the 18th day of February two thousand and five, after correction.

2. The Decision of the Appellate Court is silent about the Main Contention of the Petition, viz; the violation of several sections of the Public Law 96-399 Title V and Title VI by the defendants. (See **Appendix A-1)**

3. Because the Petitioner could not get a copy of the Decision of the Appellate Court in time, with date and seal, she could not ask for a re-hearing by a full bench. (See **Appendix A-2** and **Appendix A-3).**

4. The statutory provision believed to confer on this Court, Jurisdiction to review on a Writ of Certiorari, the Decision of the Appellate Court (Second Circuit).

STATEMENT OF THE CASE

1. A Copy of the Decision of the Appellate Court (Second Circuit); entered on August 3, 2004 is attached as **Appendix A-1**. **Appendix A-2** is the covering letter by which the Petitioner received a Decision of the Appellate Court on August 19, 2004 without date and seal. (see **Appendix A-3).**

2. **Appendix B-1** is the copy of the Memorandum and Order filed in the clerk's office on January 13, 2004.

Appendix B-2 is a copy of the District Court's Judgment, filed in the clerk's office on January 21, 2004 (erroneously stamped as January 21, 2003).

Appendix B-3 is the copy of an additional Memorandum and **Appendix B-4** is an Amended Memorandum and Order.

3. Both the District Court and the Appellate Court have IGNORED, the main and important allegation of the Petition, that the Defendants had violated Public Law PL 96-399, Title V and Title VI; thereby the Petitioner has suffered mental, physical and financial damages (See **Appendix C**).

4. **Appendix C** is a copy of the original Petition. At Para 20, the violation of Public Law 96-399, Title V, Section 505 (a) and 507 (d) is alleged. Para 39, 40 and 41 of the Petition allege the formation of an illegal Managing Board for Crown Plaza Condominium by the developer, viz; Bank Leumi, U.S.A. on March 27, 1997 in a Unit Owners' meeting. That Managing Board of 5 members consisted of 3 employees of Bank Leumi, U.S.A. and two planted FAKE Unit-Owners. The formation of the Developer's Managing Board of March 27, 1997 was in violation of Public Law 96-399, Title V Section 503 (5); and Public Law 96-399, Title VI, Section 604 (4). This illegal Managing Board has raised the already

HIGH common charges by 28.06% (see Para 2 of **Appendix D**)

5. **Appendix D** is a Copy of a signed letter from the then Managing Agent and Defendant, Mr. Robert Fonti of Crown Plaza Condominium. The names of the 3 **Bank Leumi**, U.S.A. employees can be seen at Para 3 (a); 3 (c) and 3 (e) of the letter.

6. **Appendix E** is a copy of the front page of a LIEN placed by the Managing Board on apartment No. 4A of Defendant, Maria Rodriguez, and a member of the 1997 Managing Board mentioned at Para 3 (b) of **Appendix D**. She was a FAKE owner, who never paid any common charges and she was NOT a qualified person to become a member of the Managing Board, vide all Rules, Regulations and Bylaws of the Condominium Offering Plan, as well as Public Law 96-399, Title V, Section 503 (5) and Public Law 96-399, Title VI Section 604(4).

7. **Appendix F** is the copy of the front page of a LIEN, placed by the Managing Board on Apartment No. 3A of Ms. Tenean Porter who was also a planted FAKE owner. She was a nominated member of this Managing Board made by the Developer on March 27, 1997. Her name is shown in **Appendix D** at Para 3 (d) and she was not a qualified person to become a member of the managing Board as per Bylaws of the Offering Plan as well as Public Law 96-399 Title V, Section 503 (5) and Public Law 96-399 Title VI, Section 604 (4).

8. All these factors were submitted in the Appellate Court (2nd Circuit) in the form of an Appellant's Brief and Appendix, on 5/3/2004. As a proof of submission, a copy of page 7 of the Public Docket of the Appellate Court (2nd Circuit) dated May 13, 2004, is attached as **Appendix G**.

9. A Notice of Appeal was filed in time in the District Court, signed by the Plaintiff as well as her husband., Mr. John Felix, who is a 50% shareholder of the property involved (see **Appendix H**)

10. Para 22 and Para 44 of the original Petition alleges that the Apartments of Crown Plaza Condominium were transferred in bulk, in different individuals' names, and they were rented out for bigger profits, thereby reducing the comforts of the Plaintiff in living peacefully in a Condominium Unit, as to that of a Public Housing Unit. One of them is Defendant, Mr. Ramesh Vig, who got 5 Apartments in his name and all were rented out.(See **Appendix-J**)

11. These actions were against the Findings of the Law makers as enumerated under the Legislative History of Public Law 96-399, Title V, Section 502 (a) (1) and (2). Ample evidence were given, vide, the **Appellant's Brief and Appendix** which was submitted in the Appellate Court (2nd Circuit) on 5/3/2004 (see **Appendix-G**).

12. The Judgment and Memorandum and Order of the District Court given at

Appendix B-1 to **B-4** is also silent about these Public Law 96-399 violations of different Sections by different Defendants on different occasions.

13. **Appendix I** are copies of pages 1 and 2 of a Notice of Motion together with the Motion submitted by the Plaintiff in the District Court on May 12, 2003. It consisted of 68 pages of text matter and 126 exhibits of 586 pages. That gave full details of all violations with clear proofs including violations of various Sections of Public Law 96-399 Title V and Title VI.

14. **Appendix J** are copies of the front pages of five Sales Deeds and their respective acknowledgements by the Notary with a pre-date. This is enough proof to show that almost all the Condominium units are rented out by the Developer through their agents with illegal and invalid Sales Deeds as SHIELDS. These actions are in violations of Public Law 96-399, Title V, Section 502(a) (1) & (2); Section 505(a) and Section 507(d). The offering plan states that the units will be sold to individuals for dwelling purposes only.

15. **Because the District Court as well as the Appellate Court is not mentioning anything about these violations of various Sections and Titles of Public Law 96-399, it gives an impression that Public Law 96-399, as a whole, is INVALID AND NEGLIGIBLE. Violations of Public Law 96-399 is NOT an offense anymore.** We pray that this

Honorable Supreme Court may issue a clarification in this matter. This is very much like a public issue affecting thousands of people who could not get a dwelling place of their OWN, because of wide scale corruptions in the field of Housing.

16. When we gave ample evidence of various violations of U.S. Codes and Public Laws in the District Court as well as in the Appellate Court, the Decision of the Appellate Court was unfortunate. The last sentence of the Decision of the Appellate Court states that "this appeal is DISMISSED because it lacks an arguable basis in law or fact" (see 28 U.S.C. Section 1915 (e) (2) (B) (i), i.e., **frivolous** or **malicious**). This statement is nullifying the validity of Public Law 96-399, Title V and Title VI as well as all Bylaws laid down in the Offering Plan of the Condominium. The Decision of the Appellate Court (2nd Circuit) is not issued in conformity with Civil Practice Law & Rules; Section 2219(b).

17. The_Decision of the Appellate Court is NOT signed by the Clerk or Deputy Clerk; but by the Operation Manager, which is against Appellate Procedure Rule 36(a). Procedure Rule 36(b) is violated, when the Defense Lawyer received a copy of the Decision without ANY DATE OR SEAL. (See **Appendix A-3**)

REASONS FOR GRANTING THE PETITION

1. If this Honorable Court fails to intervene and enforce Public Law 96-399 in its entirety, the Housing of this Country as a whole will be the Monopoly of a few and they will exploit the Public miserably.

2. The concept of Condominium itself is to help the low- and middle income group of people to settle their lives in affordable living spaces. But the mighty and clever people, taking undue advantages of some "loop-holes" in the Law, and using influences, are acquiring all those apartments and renting them to the eligible poor masses and exploiting them. If the learned Courts are not going to help, the benefits offered to the poor people by the Law Makers will be enjoyed by the MIGHTY PEOPLE. Instead of a help, the Condominiums can become a "death-trap" for the poor people, like Crown Plaza Condominium.

3. Therefore, we respectfully submit to this Honorable Supreme Court to set aside the Appellate Court's Decision and order an impartial trial of this case by another District Court; or declare that the Managing Board constituted on March 27, 1997 with a clear majority to the Developer was illegal and all their decisions are null and void.

Respectfully Submitted

January, 2004

Kottaram Vilasini Nair
Plaintiff, Pro Se
54-09, 108th Street,#1D
Corona, NY 11368
(718) 271-4122

E.D.N.Y.
02-cv-5119
Johnson, J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT
August 3, 2004 Decided

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse at Foley Square, in the City of New York, on the 3rd day of August two thousand and four.

Present:
Hon. John M. Walker, Jr., **(SEAL)**
Chief Judge,
Hon. Barrington D. Parker, Jr.,
Circuit Judge,
Hon. Norman A. Mordue,
*District Judge.**

Vilasini Nair Kottaram. and John Felix,**
Plaintiffs-Appellants,
V. 04-1192-cv
Bank Leumi, USA, et al.,
Defendants-Appellees.

Appellant Vilasilini Nair Kottaram, *pro se*, and her husband, John Felix, move to "stop[] Defendant Ramesh C. Vig, from claiming legal fees from City Civil Court for this federal case," and for a certificate of appealability. Additionally, Felix moves for an "emergency restoration order." Upon due

consideration, it is ORDERED that: (1) the motion to "stop[] ... Vig, from claiming legal fees" is DENIED pursuant to the Anti-Injunction Act, 28 U.S.C. § 2284, *see MLE Realty Assocs. v. Handler,* 192 F.3d 259, 261-62 (2d Cir. 1999); (2) the motion for a certificate of appealability is DENIED as unnecessary; and (3) the motion for an"emergency restoration order" is DENIED because Felix is not a proper party to this appeal. It is FURTHER ORDERED that this appeal is DISMISSED because it lacks an arguable basis in law or fact. *See* 28 U.S.C. § 1915(e)(2)(B)(i); *Nietzke v. Williams*, 490 U.S. 319, 327 (1989).

FOR THE COURT:
Roseanne B. MacKechnie, Clerk
By Sd/-
(Lucille Carr)
Operations Manager

*The Honorable Norman A. Mordue, of the United States District Court for the Northern District of New York, sitting by designation.

**Felix was never a party to Kottaram's district court action. See E.D.N.Y. Dkt. Sheet. Kottaram filed a motion to join Felix as a plaintiff, but the district court denied this request. *See Kottaram v. Bank Leumi,* No. 02-cv-5119, at 2 n. I (E.D.N.Y. May 18, 2004). While Felix's name was included on Kottaram's notice of appeal, and his name appears on this Court's official caption, he is not a proper party to this appeal. *See Martin-Trigona v. Shiff*, 702 F.2d 380, 385 (2d Cir. 1983) (observing that, as a general rule, "one who was not a party of record before the trial court may not appeal that court's judgment").

NADEL & ASSOCIATES,
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August 17, 2004

Mr. John Felix
Ms. Vilasilini Nair Kottaram.
54-09 108th Street, #lD
Corona, New York 11368

Re: Kottaram and Felix v. Bank Leumi, USA, et al

Dear Mr. Felix and Ms. Kottaram:

Enclosed for your records is a copy of the Decision and Order of the United States Court of Appeals for the Second Circuit dismissing your Appeal. If you have any questions, please do not hesitate to contact me.

Sincerely,
Sd/-
Michael J. Ciarlo
Attorney at Law

APPENDIX A-2

E.D.N.Y.
02-cv-5119
Johnson, J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse at Foley Square, in the City of New York, on the___ day of _____two thousand and four,

Present:

Hon. John M. Walker, Jr.,
Chief Judge,
Hon. Barrington D. Parker, Jr.,
Circuit Judge,
Hon. Norman A. Mordue,
*District Judge.**

Vilasini Nair Kottaram and John Felix,**
Plaintiffs-Appellants,
V. 04-1192-cv
Bank Leumi, USA, et al.,
Defendants-Appellees.

Appellant Vilasini Nair Kottaram, *pro se*, and her husband, John Felix, move to "stop[] Defendant Ramesh C. Vig, from claiming legal fees from City Civil Court for this federal case," and for a certificate of

appealability. Additionally, Felix moves for an "emergency restoration order." Upon due consideration, it is ORDERED that: (1) the motion to "stop[] ... Vig, from claiming legal fees" is DENIED pursuant to the Anti-Injunction Act, 28 U.S.C. § 2284, *see MLE Realty Assocs. v. Handler,* 192 F.3d 259, 261-62 (2d Cir. 1999); (2) the motion for a certificate of appealability is DENIED as unnecessary; and (3) the motion for an "emergency restoration order" is DENIED because Felix is not a proper party to this appeal. It is FURTHER ORDERED that this appeal is DISMISSED because it lacks an arguable basis in law or fact. *See* 28 U.S.C. § 1915(e)(2)(B)(i); *Nietzke v. Williams*, 490 U.S. 319, 327 (1989).

FOR THE COURT:
Roseann B. MacKechnie, Clerk
By Sd/-
(Lucille Carr)
Operations Manager

*The Honorable Norman A. Mordue, of the United States District Court for the Northern District of New York, sitting by designation.

**Felix was never a party to Kottaram's district court action. See E.D.N.Y. Dkt. Sheet. Kottaram filed a motion to join Felix as a plaintiff, but the district court denied this request. *See Kottaram v. Bank Leumi,* No. 02-cv-5119, at 2 n. I (E.D.N.Y. May 18, 2004). While Felix's name was included on Kottaram's notice of appeal, and his name appears on this Court's official caption, he is not a proper party to this appeal. *See Martin-Trigona v. Shiff*, 702 F.2d 380, 385 (2d Cir. 1983) (observing that, as a general rule, "one who was not a party of record before the trial court may not appeal that court's judgment").

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
JAN 13,2004
P.M. _____
TIME A.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
----------X
VILASILINI NAIR KOTTARAM,
Plaintiff,

02 CV 5119 (SJ)

MEMORANDUM
AND ORDER

-against-
BANK LEUMI, U.S.A.,
JOSEPH A. SCIARILLO,
ROBERT M. CASSUTO,
MS. JULIE SHEIFETZ,
GEORGE R. PENNY,
BENJAMIN FRANKENSTEIN,
MARIA RODRIGUEZ,
ROBERT G. FONTI,
RAMESH C. VIG,
Defendants.
----------X

APPEARANCES:
VILASILINI NAIR KOTTARAM
5409, 108 Street, Apt. #1 D,
Corona, NY 11368
Plaintiff, Pro Se
HERRICK, FEINSTEIN LLP
2 Park Avenue
New York, New York 10016

APPENDIX B-1

By: Carol M. Goodman
Attorneys for Defendants Bank Leumi USA,
Joseph A. Sciarillo, Robert M. Cassuto,
Julie Sheifeitz, and George R. Penny

JOHNSON, Senior District Judge:

Plaintiff Vilasilini Nair Kottaram sued the Defendants alleging violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq. (2000), and various state laws. Currently before this Court is Defendants' Bank Leumi USA ("Bank Leumi"), Joseph A. Sciarillo, Robert M. Cassauto, Julie Sheifetz, and George R. Penny (Collectively the "defendents") motion to dismiss Plaintiff's complaint. After reviewing the briefs and listening to oral arguments, Defendants' motion to dismiss is GRANTED. The Court also denies Plaintiff s subsequent motions for relief.

FACTUAL BACKGROUND

This action involves Plaintiff's purchase of a condominium unit in the Crown Plaza Condominium on May 31, 1995. Bank Leumi was the holder of a loan and mortgage used to construct the Crown Plaza Condominium building. After the borrower, BF-Corona Holdings Corp., defaulted on the loan, a foreclosure action was brought and the remaining unsold condominium units were purchased by EOR-Fifty Five of New York, Incorporated ("EOR").- EOR sold the remaining units and appointed members to sit on the Board of Managers.

Plaintiff claims that she: was informed upon purchasing her condominium unit that all of the remaining units would be sold only to individuals who wished to use them as their primary residence. Plaintiff avers that the units were not sold for residential purposes and that the building is being utilized as public housing. Plaintiff further claims that substandard materials were used to construct the condominiums as reflected by the numerous problems in her unit. Plaintiff also asserts that the deed to the Crown Plaza Condominium building shows that the loan was not used to pay for the proper construction of the units. Plaintiff makes a host of other allegations regarding Bank Leumi's role in the construction of the condominiums and the auctioning of the foreclosed property.

On September 20, 2002, Plaintiff filed a complaint alleging that Defendants engaged in wire and mail fraud in violation of the RICO statute. Plaintiff also sought a declaration that Defendants are liable for excess common charges paid and that the sale of the five units to co-defendant Ramesh Vig is null and void. Plaintiff further alleged that Defendants (1) caused discomfort, harassment, mental agony, emotional distress, and inconvenienced her; (2) used substandard materials in the construction of the condominium building; and (3) conduct was oppressive, wanton, malafide, intentional, willful, and discriminatory. Plaintiff also filed motion for sanctions against Defendant Maria Rodriguez on the grounds that she intentionally submitted a

false affidavit in connection with the underlying action. Plaintiff also filed a motion for summary judgment against Defendant Maria Rodriguez.

DISCUSSION

To allege a civil RICO claim, Plaintiff must establish: (1) that a RICO enterprise existed; (2) that the defendant committed predicate acts falling within one or more of the categories enumerated in the, RICO statute; (3) that those predicate acts constituted a pattern, of racketeering activity; and (4) that there is a nexus between the defendant, the pattern of racketeering activity, and the enterprise. See Crown Heights Jewish Community Council, Inc. v. Fischer, 63 F. Supp. 2d 231, 237 (E.D.N.Y. 1999). Defendants contend that the "allegations against [them] are untimely, unsubstantiated, completely unfounded, and do not give rise to a cause of action of any kind, let alone a RICO action." (Defs' Mem. of Law in Support of Motion to Dismiss at 2.) Defendants further contend that Plaintiff's "claims are barred by the statue of limitations in that they are based on Plaintiff's purchase of her condominium unit back in May 1995." Id. The court agrees.

Plaintiff has not stated a viable RICO claim because she failed to state the existence of an enterprise and failed to plead a pattern of racketeering activity as required by the RICO statute. With respect to the pattern of racketeering activity, Plaintiff alleges that Defendants committed mail and wire fraud when the owner misrepresented

that the units would be sold to individuals exclusively for residential purposes. A Plaintiff alleging mail and wire fraud must show (1) the existence of a scheme to defraud, (2) defendant's knowing or intentional participation in the scheme and (3) the use of interstate mails or wire communication in furtherance of the scheme. See S.O.K.F.C. Inc., v. Bell Atlantic Tricon Leasing Corp. 84 F.3d 629, 633 (2d. Cir. 1996). Plaintiff is also required to plead the circumstances of fraud with particularity and must show that she reasonably relied upon the misrepresentations by defendant to further the scheme. Id. at 633-34. After extensively scouring the complaint and supporting briefs, the Court finds that Plaintiff's conclusory allegations of mail and wire fraud do not meet the RICO pleading requirements.

Furthermore, it is clear that Plaintiff's claim falls outside of the four-year statute of limitations period. Defendants persuasively argue that Plaintiff's injury occurred when she purchased the unit or in the alternative when she moved into her unit. The record reflects that Plaintiff purchased her condominium on May 31, 1995 and moved into it the last week of June 1995, which is more than four years from the commencement of this action on September 20, 2002.

The court declines to exercise supplemental jurisdiction over Plaintiff's state law claims. The Court also denies Plaintiff's motion for sanctions and motion for summary judgment.

Dated: January 12, 2004 Sd/-
Brooklyn, New York Senior USDJ

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
JAN 21, 2003
P.M. _____
TIME A.M. _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

VILASINI NAIR KOTTARAM,

Plaintiff,

JUDGMENT
02 CV 5119 (SJ)

-against-

BANK LEUMI, U.S.A.,
JOSEPH A. SCIARILLO,
ROBERT M. CASSUTO,
MS. JULIE SHEIFETZ,
GEORGE R. PENNY,
BENJAMIN FRANKENSTEIN,
MARIA RODRIGUEZ,
ROBERT G. FONTI,
RAMESH C. VIG,

Defendants.

----------X

A Memorandum and Order of Honorable Sterling Johnson Jr., United States District Judge, having been filed on January 13, 2004, granting defendants' motion to dismiss-, ordering that the Court declines to exercise supplemental jurisdiction over plaintiff's state law claims; and denying plaintiffs motion for sanctions and motion for summary judgment, it is ORDERED and ADJUDGED

that plaintiff take nothing of the defendants-, that defendants' motion to dismiss is granted; that the Court declines to exercise supplemental jurisdiction over plaintiffs state law claims; and that plaintiffs motion for sanctions and for summary judgment are denied.

Dated: Brooklyn, New York
January 14, 2004

Sd/-
ROBERT C. HEINEMANN
Clerk of Court

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

VILASINI NAIR KOTTARAM,
Plaintiff,

02 CV 5119 (SJ)

MEMORANDUM AND ORDER

-against-

BANK LEUMI, U.S.A.,
JOSEPH A. SCIARILLO,
ROBERT M. CASSUTO,
MS. JULIE SHEIFETZ,
GEORGE R. PENNY,
BENJAMIN FRANKENSTEIN,
MARIA RODRIGUEZ,
ROBERT G. FONTI,
RAMESH C. VIG,
Defendants.

----------X

APPEARANCES:
VILASINI NAIR KOTTARAM
5409, 108 Street, - Apt. #1 D,
Corona, NY 11368
Plaintiff, Pro Se

HERRICK, FEINSTEIN LLP
2 Park Avenue
New York, New York 10016
By: Carol M. Goodman
Attorneys for Defendants Bank Leumi USA,
Joseph A. Sciarillo, Robert M. Cassuto,
Julie Sheifeitz, and George R. Penny

APPENDIX B-3

RADNA & ANDROSIGLIO
67 Wall Street, 22nd Floor
New York, New York 10005
By: Robert Androsiglio
Attorney for Ramesh C. Vig

JOHNSON, Senior District Judge:

Plaintiff Vilasini Nair Kottaram sued the Defendants alleging violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq. (2000), and various state laws. On January 12, 2004, this Court granted Defendants' Bank Leumi USA ("Bank Leumi"), Joseph A. Sciarillo, Robert M. Cassauto, Julie Sheifetz, and George R. Penny motion to dismiss Plaintiff's complaint. On April 8, 2004, Defendant Ramesh C. Vig requested that the Court clarify its January 12, 2004 order because the motion to dismiss that he filed was not addressed. For the reasons stated in its previous order, the Court also grants Defendant Ramesh C. Vig's motion to dismiss[1]

Dated: April 29, 2004
Brooklyn, New York

Sd/-
Senior USDJ

[1]The Court also denies Plaintiff's motions to declare herself an incompetent person and to join John Felix, her husband, as a co-plaintiff.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

VILASINI NAIR KOTTARAM,
Plaintiff, 02 CV 5119 (SJ)

AMENDED
MEMORANDUM
AND ORDER

-against-

BANK LEUMI, U.S.A.,
JOSEPH A. SCIARILLO,
ROBERT M. CASSUTO,
MS. JULIE SHEIFETZ,
GEORGE R. PENNY,
BENJAMIN FRANKENSTEIN,
MARIA RODRIGUEZ,
ROBERT G. FONTI,
RAMESH C. VIG,
Defendants.

----------X

APPEARANCES:
VILASINI NAIR KOTTARAM
5409, 108 Street, - Apt. #1 D,
Corona, NY 11368
Plaintiff, Pro Se

HERRICK, FEINSTEIN LLP
2 Park Avenue
New York, New York 10016
By: Carol M. Goodman
Attorneys for Defendants Bank Leumi USA,
Joseph A. Sciarillo, Robert M. Cassuto,
Julie Sheifeitz, and George R. Penny

APPENDIX B-4

RADNA & ANDROSIGLIO
67 Wall Street, 22nd Floor
New York, New York 10005
By: Robert Androsiglio
Attorney for Ramesh C. Vig

JOHNSON, Senior District Judge:

Plaintiff Vilasini Nair Kottaram sued the Defendants alleging violation of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 et seq. (2000), and various state laws. On January 12, 2004, this Court granted Defendants' Bank Leumi USA ("Bank Leumi", Joseph A. Sciarillo, Robert M. Cassauto, Julie Sheifetz, and George R. Penny motion to dismiss Plaintiff s complaint. On April 8, 2004, Defendant Ramesh C. Vig requested that the Court clarify its January 12, 2004 order because the motion to dismiss that he filed was not addressed. For the reasons stated in its previous order, the Court also grants Defendant Ramesh C. Vig's motion to dismiss.[1]

Dated: May 5, 2004
Brooklyn, New York

Sd/-
Senior USDJ

[1] To the extent that it was not addressed in the Court's order dated January 12, 2004, the Court also dismisses Plaintiffs action against Defendants Maria Rodriguez, Robert Fonti, and Benjamin Frankenstein. The Court denies Plaintiff's motions to declare herself an incompetent person and to join John Felix, her husband, as a co-plaintiff.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

VILASINI NAIR KOTTARAM,
Plaintiff,

Index No:
CV 02 5119
Date Purchased :

VERIFIED COMPLAINT
JOHNSON, J.
AZRACK, J.

-against-

BANK LEUMI, U.S.A.
JOSEPH A. SCIARILLO,
ROBERT M. CASSUTO,
MS. JULIE SHEIFETZ,
GEORGE R. PENNY,
BENJAMIN FRANKENSTEIN,
MARIA RODRIGUEZ,
ROBERT G. FONTI,
RAMESH C. VIG,
Defendants

----------X

Plaintiff, by her attorney, Satish.K.Bhatia, Esq., complaining of the above named defendants, respectfully alleges, upon information and belief the following:

1. Plaintiff, VILASINI NAIR KOTTARAM is a resident of the State of New York and is residing at 54-09, 108th Street, Queens County, Corona, NY-11368.

APPENDIX C

2. On information and belief defendant Bank Leumi U S A is a Federally insured Banking institution and has a principal place of business at 579, 5th Avenue N.Y. 10170.

3. On information and belief defendant Joseph A. Sciarillo, Chairman and Chief Executive Officer of Bank Leumi U S A and is currently residing at 18-05, Street 215, Apt #3 D, Bayside New York 11360.

4. On information and belief the defendant Robert M. Cassuto is one of the principal officer of Bank Leumi U S A and is residing at 112 -20, 72 Drive, Apt # A-22, Forest Hills, N.Y.11375.

5. On information and belief the defendant Ms. Julie Sheifetz is the Assistant Vice President and one of the principal officer of the defendant Bank Leumi U S A and is currently residing at 139-09, 28th Road, Apt 3F, Flushing, N Y 11354.

6. On information and belief the defendant George R. Penny was one of the members of the Managing Board of Crown Plaza Condominium nominated by the managing agent in the year 1997 and is also an employee of the defendant Bank Leumi U S A. The said defendant is currently residing at 331 Lexington Ave, Apt 7W, N.Y. 10016.

7. On information and belief the defendant Benjamin Frankenstein was the alleged sponsor of Crown Plaza Condominium and is currently residing at 64-85 Saunder's Street, Apt #6, Rego Park, N Y 11374.

8. On information and belief defendant Ms. Maria Rodriguez is the owner of Unit 4 A of Crown Plaza Condominium and was nominated as Vice President of the Managing Board for the initial period of one year in 1997 and thereafter was nominated as President for four continuous years till March 2002. Existing rules forbids any unit owner to be member of managing board for more than three years. On information and belief she is virtually taking care of the Condominium since March 1997.

9. On information and belief the defendant Maria Rodriguez has never paid any common charges since inception.

10. On information and belief Robert G. Fonti, was appointed as managing agent in the year 1993 for a period of three years, subsequently in the year 1994 Mr. Fonti was reappointed as Managing Agent with the provisions of automatic renewal for indefinite period. The said defendant is currently residing at 15 Horizon Drive, Huntington, NY 11743.

11. On information and belief the defendant Ramesh C. Vig is the paper owner of five units in the Condominium Building, an employee of the defendant Bank Leumi U S A and is currently residing at 27 Brighton Road, North, North Hills, Manhasset, N.Y. 11030.

12. This court has original jurisdiction over this action due to violation of Public Law 96-399 Title V, and violation of RICO is

involved. Venue is proper pursuant to 1391(a).

13. On or about March 14, 1995 a purchase agreement was executed between the plaintiff through a Real Estate agent and the defendant Benjamin Frankenstein. At the time of signing of the purchase agreement the defendant Benjamin Frankenstein introduced himself as the owner of the Crown Plaza Condominium.

14. At the request of the defendant Frankenstein, the plaintiff delivered a check in the amount of $2500.00 in favor of Mrs. Gloria A. Cirino Esq., to be kept in escrow. Defendant Frankenstein provided the offering plans with two amendments. As per Offering Plan the defendant Benjamin Frankenstein assured that units will be sold only to those individuals who will use the units for their primary residence. The offering plan further revealed that good materials will be used in the construction of the Condominium Unit.

15. Based on the assurances-and promises and representations as made in the offering plan, on or about the 31st day of May 1995, the plaintiff purchased unit 1 D in the Crown Plaza Condominium building located in the county of Queens, City and State of New York. Though the face value of the said unit was $125,000.00, the plaintiff actually paid approximately $158,000.00 that included the point in the interest rate, title insurance, security, air conditioning units, bathroom

fixing, etc. The plaintiff moved into the apartment in the last week of June 1995. After the purchase of the unit the plaintiff discovered that she did not get what she thought she had been bargaining for in purchasing the Condominium Unit.

16. The action of the defendant and their representatives induced the plaintiff to believe that specific plan existed to sell the unit only to those individual who will keep the units as their own residence and the plaintiff would enjoy all the comfort, peace of mind and sense of ownership as she would be living in her own private home. In fact the fraudulent conduct of the defendants has converted the Condominium building into a fish market. Had she known the representation being false she would not have purchased the Condominium Units.

17. On information and belief Crown Plaza Condominium was in fact developed by the defendant Bank Leumi USA and not Benjamin Frankenstein, who claimed himself as the president of B F- Corona Holding Corporation.

18. On information and belief the defendant Benjamin was a dummy developer and using the name of the BF- Corona Holding Corporation fraudulently to deceive the public.

19. On information and belief B F- Corona Holding Corporation was never incorporated in the State of New York. The defendant Bank Leumi U S A through its dummy

developer defendant Benjamin has all along been transacting business in the name of B F- Corona Holding Corporation and has represented that B F Corona Holding Corporation is duly incorporated in the State of New York.

20. On information and belief the defendants violated the provision of Public Law 96-399 Title V, Section 505 (a), Section 507 (d) by declaring the fictitious name of the corporation by giving fraudulent information with ulterior motive.

21. At the time of Purchase agreement the defendants Bank Leumi U S A, the developer in fact and defendant Benjamin Frankenstein, the dummy sponsor, in his offering plan, declared that he will not sell any apartment in Crown Plaza Condominium other than for the purpose of purchasers principal residence and that the ownership of Condominium Unit would be similar to the ownership of a private home in all respect. Defendant Benjamin specifically promised that every purchaser will enjoy the comfort and convenience as he owns and resides in his own private house.

22. The defendant Bank Leumi U S A in violation of the provisions of the offering plan sold the Units in bulk to several individuals who were not using the apartment for their principal place of residence.

23. On information and belief the defendant Bank Leumi USA used substandard materials in the construction as

the kitchen fittings started falling down; external part of electrical outlets were coming off the wall; the bathroom furnishings were broken apart; drainage clogs were frequent; etc immediately after occupation. Due to substandard materials the roof, plumbing, heating etc are repaired every year. The amount spent on repairs was included in the common charges.

24. On information and belief the defendants have misappropriated a substantial amount of money taken as a loan of $ 2.7 million for construction of the building and they have spent a very less amount on the actual construction of the Condominium building and in fact they have misappropriated the amount and substandard materials were used in the construction.

25. Mr. Benjamin, the alleged sponsor of the Crown Plaza Condominium, has repeatedly and very frequently changed his statements regarding the loans. For example initially it was shown that it was interest free loan without any condition. Subsequently, in amended offering plan, it was shown as a mortgage loan, and again in a different and contradictory version, it was shown that they have a lien on all the 29 units of the Condominium.

26. On information and belief that defendants in conniving and conspiracy with each other deceived the general public and the plaintiff by forging documents making

fictitious corporation, starting construction even without owning the land.

27. On information and belief the construction of the condominium commenced in the year 1989. The construction was done at very slow speed and defendant Benjamin did not use the material as laid on in the offering plan.

28. Though the construction commenced in the year 1989, the defendant Benjamin or the B F - Corona Holding Corporation were not owner of the land on which the construction started as the land was purchased on or about January 6, 1992.

29. On information and belief the defendant Bank Leumi Trust Company gave a loan of $2,730,000.00 (Two Million and Seven Hundred Thirty Thousand dollars) without any collateral security and without any written agreement.

30. In the Offering Plan it was mentioned that the said loan was allegedly extended to April 23, 1993. Offering Plan and the amendments were totally silent about the date and the person to whom the loan was allegedly given. At the time of extension of loans the defendant Bank Leumi U S A waived all the arrears of interest on two occasions.

31. The defendants Bank Leumi U S A, through defendant Benjamin Frankenstein, falsely declared that B F - Corona Holding Corporation was incorporated on Sept 19, 1990, in which defendant Benjamin

Frankenstein and his son were the principal officers. In fact B F Corona Holding Corporation was a fictitious corporation and defendant Benjamin Frankenstein was a Commission Agent of Bank Leumi U S A. The defendants also declared that the corporation can be dissolved even before completion of the project.

32. Though the defendant Frankenstein was expecting to complete the condominium by the end of 1991, the plan was declared effective on Feb 5, 1993. The defendant Benjamin listed unit numbers I B, 2 D, 3 A, 3 B, 3 D, 4 A, 4 C, 4 D, 5 A, 5 D, 6 E, to meet the minimum percentage needed under the offering plan to declare the offering plan effective. He alleged that the purchase agreements in respect of above units were executed during the period from June 1992 to Sept 1992. In fact the defendant filed the perjured affidavit in First Amendment dated Feb 5, 1993. It was alleged in the affidavit that one Mrs. Maria Rodriguez, got her purchase agreement on June 3, 1992 and one Mr. Raymond Alston got his purchase agreement on August 13, 1992. The other false owners showed in the perjured affidavit were Mrs. Tenean Porter who allegedly purchased the apartment number 3 A on Jan 10, 1995 and Judith A Brodkin who allegedly purchased the apartment number I B on Feb 14, 1994.

33. Though the Condominium was to be completed by the end of Dec 1991 and several purchase agreements were executed in the

year 1992, the actual sale started in the year 1994. The defendant Benjamin Frankenstein intentionally and with malafide motive delayed the completion of the construction until 1994.

34. The plaintiff was discriminated on the ground of her race as the management is not suing or taking any legal steps against other unit owners who are not paying the common charges. On the contrary the other unit owners were nominated on the managing board to take decisions on all the important matters.

35. On information and belief, on or about Dee 20, 1996, Bank Leumi U S A. foreclosed 21 units out of 29 units of the Crown Plaza Condominium.

36. On information and belief on or about Nov 27, 1996 even prior to foreclosure of the property, EOR FIFTY FIVE, a subsidiary of Bank Leumi, owned by the defendant Mr. Sciarillo, purchased 21 units from Bank Leumi U S A. In the amendment of the Offering Plan EOR FIFTY FIVE claimed that they acquired the title of 21 Units of the Condominium. In fact Mr. Sciarillo formed several corporations to confuse and deceive the public and secure federal loans with low interest rate and thereby make illegal profits.

37. The defendant Bank Leumi U S A and the dummy developer Benjamin Frankenstein made false-representation to the various authorities to get tax exemptions and other concessions for a period of 25 years

after certification that they proposed to build the Condominium building on a vacant and undeveloped piece of land.

38. In fact, Bank Leumi U S A was the real developer from the very beginning and their sole intention was to lease the units and get higher profits by renting and not by selling it. In order to achieve their illegal and unlawful objectives they sold some of the unit to their own employees and some units to fictitious people.

39. The developer or even the sponsorer has no statutory or contractual authority to nominate their own employees to the managing board as it has been done in this case. The Condominium is to be managed by an association exclusively by the unit owners and all the decisions are to be taken by the Condominium Association of which only unit owners are the members. In this case the defendants nominated three of their employees to a Managing board on or about March 27, 1997 with the help of Robert Fonti, the Managing Agent, and one unit owner of apartment 4A. This illegal Board raised 28.06% of the existing common charges. The raise is therefore void ab- initio. Due to exorbitant rate in the common charges, the person(s) with low income were unable to purchase units in the Condominium. The increase of the common charges was done intentionally, willfully and in bad faith.

40. The nomination of three -bank employees and one unit owner and one

dummy owner as members was in violation of the following rules and regulations of the offering plan: Paragraph 1&2 page iii, para 3 page I, last para page 55, para 1, 2, 3 of page 56, page 157, Article I, definition one; page 159, Article III section 2; page 160 Section 4, Page 162 Article IV section 1, page 164 Article IV Section 4. Additionally, by nominating three bank employees and two Unit owners also violated Federal law i.e. Public Law 96-399 dated Oct 8, 1990 Section 604(4).

41. The compliance of the above mentioned Federal Law was mandatory in nature and the three bank employees and the Mr. Fonti, the managing agent in connivance and conspiracy with each other treated the building as their own private property.

42. Without disclosing to the Unit owners or the general public any amendment, those individuals suddenly announced amendment no. 5 of the offering plan. The genuine unit owners were completely kept in dark about the amendment no. 3 and amendment no 4 of the offering plan.

43. Amendment no. 5 changed the basic structure of the offering plan. In the original initial offering plan it was declared that units will be sold only to those individuals who will keep the units as their principal place of residence. In amendment no. 5, it was declared that all remaining units will be leased. After the receipt of the amendment no 5, the plaintiff through her attorney served a

legal notice to EOR FIFTY FIVE advising them that amendment no. 5 was in violation of law and if they leased the units they will be responsible for damages. (Legal Notice Jan 19, 1999). The defendants through real estate agent also published an article in daily news and made false representation about the quality/physical conditions of the units. A security man was posted at the entrance of the Condominium for the first time after the Condominium Opened. (From Morning to Evening). Colorful flyers were kept in front of the main entrance describing the high rate of common charges prominently printed in bold letters. Each and every visitor who came to look for the apartment with intention of purchasing were given a copy of the flyer. Majority of the people after seeing the high rate of maintenance left without seeing the apartment. Those who wanted to see the apartment were threatened by the security guard and turned away. The real purpose of showing the high common charges in the flyers and keeping a security guard was to avoid the actual sale of the units and to get an excuse to earn money by leasing the units or by selling the units to their own person(s). A UPS deliveryman came to the building to deliver a parcel. The security man was not allowing any person to visit the building.

44. Thereafter Bank Leumi sold five apartments to the defendant named Ramesh C. Vig who was managing the other properties of Bank Leumi U S A; two apartments were sold to defendant

Mr. Emir-Lemo who was the superintendent; one sold to his daughter and a third apartment was sold to a third person all nine apartment was rented out at a high rent.

45. There is no justification of raising common charges due to a surplus of $40,000.00. The Unit owners were not allowed to inspect the book of accounts and to take extract. Superficial expenses were shown for example $6250.00 for a termite inspection whereas normally a termite inspection is done for $40.00.

46. Though on the papers they were showing that the members of the board were elected but no election ever took place. The unit owners never receive any notification. In fact, the members of the board were nominated by the defendant Bank Leumi U S A.

47. The defendants took many concessions from the Government by filing perjured affidavits. The defendants have falsely stated in the affidavit that more than 51 % of the units were sold and that the survey of the land took place in March 27, 1989 and that the construction started before January 1990 and that they will construct multiple dwelling for residential purpose only and not for commercial purpose.

48. When the Condominium was purchased the plaintiff had the belief that she was going to live in a Condominium and now she feels like she is living in a Public Housing Project.

FIRST CAUSE OF ACTION

49. The plaintiff reiterates the averment contained in paragraph 1 to 48 of the Complaint.

50. The defendants are liable under RICO as they misrepresented concerning scope and development of the Condominium building that were made to the plaintiff and other prospect purchasers over a period of several months.

51. Defendants conducted the business affairs of selling and indirectly leasing through pattern of Mail and wire fraud in that the defendant used telephone and mail service to convey their misrepresentation which resulted in fraudulent inducement of selling the property and also to prevent actual sale of the property.

52. The defendants have received the income derived from a pattern activity and they used and invested the income in enterprises engaged in affecting inter state commerce. In fact each of the defendants have derived the income directly or indirectly from pattern of racketeering activities. And such income was used or invested directly or indirectly by the defendants in operation of other projects, which were the enterprises engaged in activities that affected inter state commerce.

53. The plaintiff claims damages in the sum of $ 500,000.00 due to violation of the provision of RICO.

SECOND CAUSE OF ACTION

54. The plaintiff reiterates the averments contained in paragraph I to 48 of the Complaint.

55. The raise in the common charges by the defendant Bank Leumi U S A was in violation of the Offering Plan and Amendments and was also in violation of law. The plaintiff claims a judgment for declaration that 28 % raise in the common charges made in the year 1997 was illegal and for a refund of excess amount recovered by the defendant Bank Leumi from the plaintiff.

THIRD CAUSE OF ACTION

56. The plaintiff reiterates the averments contained in paragraph I to 48 of the Complaint.

57. The Sale of the five units to defendant Ramesh C. Vig was only on paper and in fact defendant Bank Leumi was the real owner of the five units. The plaintiff claims a declarative judgment declaring the resale of five units to defendant Ramesh C. Vig illegal and void.

FOURTH CAUSE OF ACTION

58. The plaintiff reiterates the averments contained in paragraph 1 to 48 of the Complaint.

59. The conduct of the defendants caused discomfort, harassment, mental agony, emotional distress, and inconvenience to the plaintiff. The plaintiff claims a judgment in the sum of $ 5 million as damages.

FIFTH CAUSE OF ACTION

60. The plaintiff reiterates the averment contained in paragraph 1 to 48 of the Complaint.

61. The plaintiff claims damages in the sum of $100,000. 00 due to use of substandard materials in the construction of the building purchased by the plaintiff.

SIXTH CAUSE OF ACTION

62. The plaintiff reiterates the averment contained in paragraph I to 48 of the Complaint.

63. The conduct of the defendants was oppressive, wanton, malafide, intentional and willful and discriminatory. The plaintiff claims a judgment for punitive damages to be determined by this Court.

Wherefore the plaintiff requests the judgment as claimed in First to Sixth cause of action along with reasonable attorneys fees and any other relief this court may deem fit and proper.

Dated: September 12, 2002
New York, New York

Sd/-
SATISH K. BHATIA
Attorney for the plaintiffs,
1204 Broadway, Suite 307,
New York, NY 10001
Tel: - (212) 576-1092

VERIFICATION

I Vilasini Nair Kottaram do swear under penalty of perjury that allegations contained in the accompanying Complaint are true to my knowledge except those stated to be true on information and belief and as to those allegations also I believe them to be true.

Sd/-
VILASINI NAIR KOTTARAM

Sworn Before me on this
12th day of September 2002
State of New York
County of New York

Sd/-
NOTARY PUBLIC
SEAL

Vincent James Management Company
31 East 32nd Street, New York, New York 10016

May 1, 1997
Unit Owners of
The Crown Plaza Condominium
54-09 108th Street
Corona, NY- 11368

RE: COMMON CHARGE INCREASE

Dear Unit Owners:

1. Each year, the Board of Managers works closely with our office and the building's accountant to formulate the budget for the coming year. Fortunately, through careful financial management, we have succeeded in keeping the Condominium's common charges at its same level for the past three years.

2. Unfortunately, the Condominium experienced difficulties this past year due to the prior sponsor not paying their common charges, which resulted in unpaid liabilities being carried forward to the budget for the coming year. The anticipated income from the leasing of parking spaces has not materialized and in addition, the building's operating expenses overall have increased. The combined effect of these factors required the Condominium to impose a 28.06% increase in common charges. This increase was announced at the annual meeting of unit

owners held on March 27, 1997 and was reflected in your April 1st common charge bill.

3 At the annual meeting of unit owners a five member board was nominated and at the Board of Managers meeting held on April 24, 1997 the five member board listed below was elected to fill the respective positions:

a. President - Julie Sheifetz **Bank Leumi**
b. Vice President - Maria Rodriguez Apt 4A
c. Treasurer - Robert Cassutoc **Bank Leumi**
d. Secretary - Tenean Porter, Apt 3A
e. Assistant Secretary - George R. Penny, **Bank Leumi**

4. At the last Board of Managers meeting the board asked that we prepare an inspection form for repairs and forward it to the unit owners for completion (see form enclosed). Please fill out this form and return to our offices no later than May 8, 1997.

Keep a copy of the form for your files. This will help us anticipate the needed repairs, when your unit and the building is inspected on Saturday, May 10, 1997, between 10:00 am and 12:30 pm.

Very truly yours,
Sd/-
Robert G. Fonti
Vincent James Management

Telephone (212)532-4915,
Facsimile (212) 532-3182

REEL 4789 PG 1167

139 1BB
ADVANCE ABSTRACT CORP.
ORIGINAL

NOTICE OF LIEN

Pursuant to Section 339-z of the Real Property Law of the State of New York.

Lienor : THE BOARD OF MANAGERS OF THE CROWN PLAZA CONDOMINIUM

Owner of Property: MARIA RODRIGUEZ & RAMON RODRIGUEZ

Property Address : 54 09 108th Street
Apartment #4-A
Corona, New York 11368
Block : 1955
Lot: 1015

RECORD AND RETURN TO:

BEAL & BEAL, ESQS.
Attorneys at Law
34 Birchwood Park Crescent
Jericho, New York 11753
(516) 938 – 0877
Our file No.: 801.1

APPENDIX E

REEL 4789 PG 1160

139 1BB
ADVANCE ABSTRACT CORP.
ORIGINAL

NOTICE OF LIEN

Pursuant to Section 339-z of the Real Property Law of the State of New York.

Lienor : THE BOARD OF MANAGERS OF THE CROWN PLAZA CONDOMINIUM

Owner of Property: TENEAN PORTER

Property Address : 54 09 108th Street
Apartment #3A
Corona, New York 11368
Block : 1955
Lot: 1010

RECORD AND RETURN TO:

BEAL & BEAL, ESQS.
Attorneys at Law
34 Birchwood Park Crescent
Jericho, New York 11753
(516) 938 – 0877
Our file No.: 801.2

APPENDIX F

INDIV
OPEN

5/3/04 Copy of Appellant Felix motion for submitting brief and appendix 30 exhibits served upon opposing counsel.

5/3/04 APPELLANT John Felix, brief RECEIVED

5/3/04 APPELLANT John Felix, appendix received.

5/3/04 Appellant John Felix motion for submitting brief and Appendix 30 Exhibits, filed with proof of service.

5/6/04 Appellant John Felix for Emergency Restoration Order filed with proof of service.

5/12/04 APPELLANT John Felix, brief and appendix with proof of service filed.

5/12/04 Appellant John Felix motion to stop defendants from claiming legal fees filed with proof of service.

5/12/04 Order FILED GRANTING motion for submitting Brief and Appendix 30 exhibits by Appellant John Felix, endorsed on motion dated 5/12/2004. IT IS HEREBY ORDERED THAT the motion is GRANTED to this extent- the brief and appendix will be filed. Endorsed by CJM.

5/13/04 Notice to counsel/ pro se regarding court order dated 5/12/04.

Docket as of May 13, 2004 3:36 pm Page 7

APPENDIX G

FORM 1

NOTICE OF APPEAL
UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NEW YORK
Docket No. 02-CV-5119 (SJ)

Notice is hereby given that Vilasini Nair Kottaram, and John Felix hereby appeals to the United States Court of Appeals for the Second Circuit from the decision taken by the Honorable Judge Sterling Johnson Jr., US District Judge and filed on January 13, 2004 granting Defendants Motion to Dismiss, ordering that the Court declines to exercise supplemental jurisdiction over Plaintiffs State Law claims, and denying Plaintiffs Motion for Sanction, and Motion For Summary Judgment.

Filed in the Clerk's Office, US District Court, Eastern District, NY. on January 21, 2003 (We presume that 2003 is a mistake and not a deliberate attempt to disqualify the Plaintiff, because at the bottom of the Letter the date is written early as January 14, 2004).

A Petition for a Writ of Mandamus vide Docket No. 03-3126 is already pending in the Appellate Court (Second Circuit).

Sd/-
Vilasini Nair Kottaram
5409, 108 Street, Apt #1D
Corona, NY-11368, (718) 271 – 4122

Sd/-
John Felix
5409, 108 Street, Apt #1D
Corona, NY-11368, (718) 271 – 4122

Date: 13th, February 2004

APPENDIX H

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

VILASINI NAIR KOTTARAM,
Plaintiff,

-against-

Index No: CV 02-5119 SJ
Date Purchased: Sept 20, 2002

NOTICE OF A MOTION FOR A SUMMARY JUDGMENT. (TEXT 68 PAGES AND 126 EXHIBITS OF 586 PAGES).

SEAL
DATED
MAY 12, 2003

BANK LEUMI, U.S.A.
JOSEPH A. SCIARILLO
ROBERT M. CASSUTO
MS. JULIE SHEIFETZ
GEORGE R. PENNY -
BENJAMIN FRANKENSTEIN
MARIA RODRIGUEZ
ROBERT G. FONTI
RAMESH C. VIG

Defendants

----------X

PLEASE TAKE NOTICE that upon the annexed Affidavit of Vilasini Nair Kottaram sworn to on the 12th day of May 2003 and upon the complaint herein, the Plaintiff will move this Court of Honorable Judge Sterling Johnson, Jr.,.....

APPENDIX I

Dated May – 12th, 2003
Queens County, NY.

Sd/-
Vilasini Nair Kottaram
Pro Se
5409, 108 Street, Apt. # 1 D
Corona, NY-11368
(718-271-4122)

Copies To:

CALLAN, KOSTER, BRADY & BRENNAN, LLP
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RADNA & ANDROSIGLIO
Robert G. Androsiglio, Esq.
Attorney for Defendant
Ramesh Vig
67 Wall Street - 22nd Floor,
New York, New York - 10005
(212) 742-0001

HERRICK, FEINSTEIN LLP
Carol M. Goodman, Esq.
Attorney for Defendants
Bank Leumi USA
2 Park Avenue,
New York, New York - 10016
(212) 592-1400

DEED No.1

This indenture, made the **6th day of April, 1999**, between EOR Fifty-Five of New York, Inc., a New York corporation with an office c/o Bank Leumi USA, 562 Fifth Avenue, New York, New York 10036 (hereinafter the "Grantor"), and **Ramesh C. Vig,** residing at 27 Brighton, Road North; Manhasset, Now York (hereinafter the "Grantee").

WITNESSETH

That the Grantor, in consideration of TEN and 00/100 DOLLAR ($10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which Is hereby acknowledged, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, forever.

The condominium unit known as **Unit 1A** (hereinafter called the "Unit") in the condominium known as The Crown Plaza Condominium (hereinafter called the condominium located in the County of Queens, City and State of New York, more particularly designated and described as Unit No. 1A In the declaration establishing The Crown Plaza Condominium (hereinafter called the "Declaration"), made by the Grantor under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), which Declaration is dated the 24th day of August, 1993 and recorded in the Office of the Register of the City of New York.

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

On the **5th day of April 1999**, before me personally came Julie Sheifetz to me known, who being by me duly sworn, did depose and say that she maintains an address at co Bank Leumi Trust Company of New York, Inc., 562 Fifth Avenue, New York, New York 10036, that she is the Assistant Vice President of EOR Fifty-Five of

New York, Inc., the corporation described in and which executed the above instrument, and that she signed her name thereto by authority of the board of directors of said corporation.

Sd/-
Notary Public
(Seal)

STATE OF NEW YORK)
)ss
COUNTY OF QUEENS)

On this **6th day of April 1999**, before me personally came **Ramesh C. Vig**, to me known, who being by my duly sworn, did depose and say that he resides at 27 Brighton Road North, Manhasset, NY and acknowledged that he signed and delivered the foregoing instrument as his act and deed, for the uses and purposes therein expressed.

Sd/-
Notary Public
(Seal)

REEL 5225 PG 2432

DEED No.2

This indenture, made the **6th day of April, 1999,** between EOR Fifty-Five of New York, Inc., a New York corporation with an office c/o Bank Leumi USA, 562 Fifth Avenue, New York, New York 10036 (hereinafter the "Grantor"), and **Ramesh C. Vig**, residing at 27 Brighton Road North; Manhasset, Now York (hereinafter the "Grantee").

WITNESSETH

That the Grantor, in consideration of TEN and 00/100 DOLLAR ($10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which Is hereby acknowledged, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, forever.

The condominium unit known as **Unit 5B** (hereinafter called the "Unit") in the condominium known as The Crown Plaza Condominium (hereinafter called the condominium located in the County of Queens, City and State of New York, more particularly designated and described as Unit No. 5B In the declaration establishing The Crown Plaza Condominium (hereinafter called the "Declaration"), made by the Grantor under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), which Declaration is dated the 24th day of August, 1993 and recorded in the Office of

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

On the **5th day of April 1999**, before me personally came Julie Sheifetz to me known, who being by me duly sworn, did depose and say that she maintains an address at co Bank Leumi Trust Company of New York, Inc., 562 Fifth Avenue, New York, New York 10036, that she is the Assistant Vice President of EOR Fifty-Five of

New York, Inc., the corporation described in and which executed the above instrument, and that she signed her name thereto by authority of the board of directors of said corporation.

Sd/-
Notary Public
(Seal)

STATE OF NEW YORK)
)ss
COUNTY OF QUEENS)

On this **6th day of April 1999**, before me personally came **Ramesh C. Vig**, to me known, who being by my duly sworn, did depose and say that he resides at 27 Brighton Road North, Manhasset, NY and acknowledged that he signed and delivered the foregoing instrument as his act and deed, for the uses and purposes therein expressed.

Sd/-
Notary Public
(Seal)

DEED No. 3

This indenture, made the **6th day of April, 1999**, between EOR Fifty-Five of New York, Inc., a New York corporation with an office c/o Bank Leumi USA, 562 Fifth Avenue, New York, New York 10036 (hereinafter the "Grantor"), and **Ramesh C. Vig**, residing at 27 Brighton Road North; Manhasset, Now York (hereinafter the "Grantee").

WITNESSETH

That the Grantor, in consideration of TEN and 00/100 DOLLAR ($10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which Is hereby acknowledged, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, forever.

The condominium unit known as **Unit 5D** (hereinafter called the "Unit") in the condominium known as The Crown Plaza Condominium (hereinafter called the condominium located in the County of Queens, City and State of New York, more particularly designated and described as Unit No. 5D In the declaration establishing The Crown Plaza Condominium (hereinafter called the "Declaration"), made by the Grantor under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), which Declaration is dated the 24th day of August, 1993 and recorded in the Office of the Register of the City of New York.

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

On the **5th day of April 1999**, before me personally came Julie Sheifetz to me known, who being by me duly sworn, did depose and say that she maintains an address at co Bank Leumi Trust Company of New York, Inc., 562 Fifth Avenue, New York, New York 10036, that she is the Assistant Vice President of EOR Fifty-Five of

New York, Inc., the corporation described in and which executed the above instrument, and that she signed her name thereto by authority of the board of directors of said corporation.

Sd/-
Notary Public
(Seal)

STATE OF NEW YORK)
)ss
COUNTY OF QUEENS)

On this **6th day of April 1999,** before me personally came **Ramesh C**. Vig, to me known, who being by my duly sworn, did depose and say that he resides at 27 Brighton Road North, Manhasset, NY and acknowledged that he signed and delivered the foregoing instrument as his act and deed, for the uses and purposes therein expressed.

Sd/-
Notary Public
(Seal)

DEED No.4

This indenture, made the **6th day of April, 1999**, between EOR Fifty-Five of New York, Inc., a New York corporation with an office c/o Bank Leumi USA, 562 Fifth Avenue, New York, New York 10036 (hereinafter the "Grantor"), and **Ramesh C. Vig**, residing at 27 Brighton, Road North; Manhasset, Now York (hereinafter the "Grantee").

WITNESSETH

That the Grantor, in consideration of TEN and 00/100 DOLLAR ($10.00) and other good and valuable consideration paid by the Grantee, the receipt and sufficiency of which Is hereby acknowledged, does hereby grant and release unto the Grantee, the heirs or successors and assigns of the Grantee, forever.

The condominium unit known as **Unit 5E** (hereinafter called the "Unit") in the condominium known as The Crown Plaza Condominium (hereinafter called the condominium located in the County of Queens, City and State of New York, more particularly designated and described as Unit No. 5E In the declaration establishing The Crown Plaza Condominium (hereinafter called the "Declaration"), made by the Grantor under the Condominium Act of the State of New York (Article 9-B of the Real Property Law of the State of New York), which Declaration is dated the 24th day of August, 1993 and recorded in the Office of

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

On the **5th day of April 1999**, before me personally came Julie Sheifetz to me known, who being by me duly sworn, did depose and say that she maintains an address at co Bank Leumi Trust Company of New York, Inc., 562 Fifth Avenue, New York, New York 10036, that she is the Assistant Vice President of EOR Fifty-Five of

New York, Inc., the corporation described in and which executed the above instrument, and that she signed her name thereto by authority of the board of directors of said corporation.

Sd/-
Notary Public
(Seal)

STATE OF NEW YORK)
)ss
COUNTY OF QUEENS)

On this **6th day of April 1999**, before me personally came **Ramesh C. Vig**, to me known, who being by my duly sworn, did depose and say that he resides at 27 Brighton Road North, Manhasset, NY and acknowledged that he signed and delivered the foregoing instrument as his act and deed, for the uses and purposes therein expressed.

Sd/-
Notary Public
(Seal)

NEW YORK FORM (WITH WARRANTIES)
Fannie Mae Loan # 1663344973

Revised 2/28/92
REO# P001972

DEED N0.5

THIS DEED made the **26 day of APRIL 2001**, between FEDERAL NATIONAL MORTAGE ASSOCIATION A/K/A FANNIE MAE, a corporation organized under an Act of Congress and existing pursuant to the Federal National Mortgage Association Charter Act, having its principal office in the City of Washington, District of Columbia, and an office for the conduct of business at 13455 Noel Road, Galleria Tower II, Suite 600, Dallas, TX 75240-5003 (hereinafter called the Grantor) and **RAMESH C. VIG**, 54-09 108TH STREET, UNIT 3A CORONA, NY (hereinafter called the Grantee).

WITNESSETH, That the said Grantor for and in consideration of the sum ONE HUNDRED TWELVE THOUSAND FIVE HUNDRED and 00/100 Dollars ($112,500.00) and other valuable consideration, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said Grantee, heirs and assigns:

The property is commonly known as 54-09 108TH STREET **UNIT 3A**, CORONA, NY and is more particularly described in Exhibit A attached hereto and made a part hereof by this reference.

IN WITNESS WHEREOF, Grantor has caused this Deed to be signed in its name and on its behalf by its vice President, the day and year first above written.

FEDERAL NATIONAL
MORTAGE ASSOCIATION
By Sd/-
Donna Ghassemi,
Vice President

SEAL

ATTEST: Sd/-
Sheril Martin,
Assistant Secretary

STATE OF TEXAS)
)ss
COUNTY OF DALLAS)

On the **23RD day of April 2001**, before me, the undersigned, personally appeared Donna Ghassemi, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument. The individual(s), or the person upon behalf of which the individual acted, executed the instrument and that such individual made such appearance before the undersigned in the City of Dallas, County of Dallas, State of Texas.

Sd/-
(SEAL) Notary Public
in and for Dallas County, Texas

(2)

Supreme Court, U.S.
FILED
APR 27 2005
OFFICE OF THE CLERK

No. 04-1135

IN THE

Supreme Court of the United States

VILASINI NAIR KOTTARAM,

Petitioner,

v.

BANK LEUMI, USA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Respondent Bank Leumi, USA certifies that it is a subsidiary of Bank Leumi le-Israel Corporation. Bank Leumi le-Israel B.M. is the parent company and the owner of all of the shares of Bank Leumi le-Israel Corporation. No other company has an ownership interest of 10% or more in Bank Leumi, USA.

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STATUTES

The Condominium and Cooperative Conversion Protection and Abuse Relief Act, P.L. 96-399, 15 U.S.C. § 3601, *et seq.* ..... *passim*

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Respondents Bank Leumi USA ("Bank Leumi"), Joseph A. Sciarillo, Robert M. Cassuto, Julie Sheifetz and George R. Penny (together, "Respondents") request that this Court deny the petition of Vilasilini Nair Kottaram ("Kottaram") ("Petitioner") for a writ of certiorari seeking review of the judgment of the United States Court of Appeals for the Second Circuit ("Second Circuit") entered on August 3, 2004.

STATEMENT OF THE CASE

This action involves a condominium building known as the Crown Plaza Condominium, a six-story, 29-unit condominium building located at 54-09 108th Street, Corona, Queens. Petitioner is the owner of one condominium unit, having purchased the unit from the original sponsor, B-F Corona Holdings, Inc., on May 31, 1995.

Almost seven years later, through counsel, Petitioner commenced this action against Bank Leumi, whose only involvement with the Crown Plaza Condominium was as the holder of a 1989 mortgage loan to B-F Corona, the original sponsor.[1] In 1996, B-F Corona defaulted on the mortgage

---

1. Petitioner was initially represented by counsel, Satish K. Bhatia. However, during the course of the District Court proceedings Petitioner made a motion to discharge her counsel because counsel had become "uncooperative and obstinate." She then opted to proceed *pro se*. In addition, Petitioner's husband John Felix ("Felix') was never a party to the district court action as Petitioner filed a motion to join Felix as a plaintiff, but the district court denied this request. However, Petitioner included Felix's name on her Notice of Appeal to the Second Circuit. The Second Circuit included a footnote in its August 3, 2004 decision in which it explained that although Felix's name appeared in the Court's official caption, he was not a proper party to the appeal. (Pet. at 9).

and Bank Leumi foreclosed on its collateral — the unsold condominium units — and subsequently sold its position to an affiliate, EOR Fifty-Five of New York, Inc ("EOR"). EOR became the subsequent sponsor.

Petitioner's complaint alleged a cause of action under RICO, claiming essentially that Respondents: (i) engaged in the criminal acts of "wire fraud" and "mail fraud" because the condominium's offering plan "misrepresented" that condominium units would be sold to individuals exclusively for use as their primary residence; and (ii) that substandard materials were used in the construction of Petitioner's unit resulting in repairs to the roof and the plumbing and heating systems. (Petition for Writ of Certiorari ("Pet."), at 24-41).

In dismissing Petitioner's Complaint, the District Court correctly held that Petitioner had failed to comply with the RICO statute's rigorous pleading requirements and, that in any event, those claims were time-barred as they were brought outside of RICO's four year limitations period. Having dismissed the only federal claim that was properly before it, the District Court declined to exercise supplemental jurisdiction over any pendant state law claims. (Pet. at 13-14).

In an attempt to circumvent RICO's four-year statute of limitations, Petitioner's brief to the Second Circuit focused on a new cause of action; that the Respondents somehow violated the Condominium and Cooperative Conversion Protection and Abuse Relief Act, P.L. 96-399, 15 U.S.C. § 3601, *et seq.* (the "Condominium Act"), a statute addressing long-term self-dealing contractual arrangements entered into by a condominium sponsor ("sweetheart deals"), because the Sponsor, not Bank Leumi, exercised its rights under the

offering plan to appoint its representatives to the condominium's Board of Managers (the "Board") until the last condominium unit was sold. Thus, Petitioner contends, the Board was not illegally constituted and its decisions (such as the raising of common charges) are void.

The Second Circuit properly ordered the appeal DISMISSED because it lacked "an arguable basis in law or fact." It also denied Petitioner's other pending motions, such as denying its motion to stop the Defendant Ramesh C. Vig from claiming legal fees; (ii) denying Petitioner's motion for a certificate of appealability as "unnecessary"; and (iii) denying petitioner's motion for an "emergency restoration order." (Pet. at 8-9).

Petitioner now claims, in its application before this Court, that the failure of the courts to enforce the Condominium Act is jeopardizing the "Housing of this Country" and resulting in exploitation by the "MIGHTY PEOPLE." (Pet. at 7). Petitioner's latest argument is consistent with her voluminous submissions to the courts which in which she has unleashed a torrent of rambling, incoherent and libelous attacks on Bank Leumi and its current and former employees. In fact, in an affirmation for the District Court, Petitioner went so far as to claim, without a shred of substantiation, that Bank Leumi, a mere mortgage holder of a construction loan for the original sponsor back in 1989, is actually a criminal enterprise and set up exactly like an "organized crime family." (Petitioner's Affirmation Opposing Declaration of Defense Counsel & Demanding Answers to Charges or Summary Judgment at 11).

Petitioner's outrageous and untrue allegations are simply an attempt to mask the truth that she has utterly failed to

state a viable claim against Respondents. Instead, the only thing Petitioner has accomplished in this case is to unnecessarily multiply these proceedings by filing numerous, frivolous motions — including two in the Second Circuit seeking an order related to a water leak in her apartment — containing hundreds of pages of irrelevant argument and annexing thousands of pages of exhibits that have nothing to do with the claims at issue.

Simply put, Petitioner's claims, at best, amount to a time-barred negligence or breach of contract action against the original Sponsor, as this action seeks nothing more than recovery for alleged damages to Petitioner's condominium unit incurred in June 1995 — more than six (6) years before the action was commenced. In sum, this is not a RICO case (the cause of action asserted in the Complaint); it is not a case about a violation of the Condominium Act (a statute relied upon as a basis for jurisdiction in the Complaint); and it is certainly not a case requiring the review of this Court. Thus, as the District Court and the Second Circuit both properly found, the allegations against Respondents are untimely, unsupported, completely unfounded, do not give rise to a cause of action of any kind and "lack an arguable basis in law or fact". (Pet. at 8-9, 13-14).

REASONS FOR DENYING THE PETITION

The petition for certiorari should be denied because it satisfies none of the criteria specified by this Court's rules or decisions for issuance of the writ. The decision below does not conflict with a decision of this Court or any Court of Appeals. This claim was first styled as a RICO action and, before the Second Circuit, was reinvented by Petitioner as a violation of the Condominium Act. The District Court and the Second Circuit have both heard and considered the arguments raised by Petitioner, and both courts have summarily dismissed these claims. Petitioner has no cognizable claim against Respondents, yet she persists in filing a flurry of frivolous motions and appeals which are both burdensome and costly for Respondents and the judicial system.

While Respondents submit that the Condominium Act claim is not properly before this Court — because this was not a cause of action asserted in the underlying Complaint — should the Court decide to consider these allegations, the well established law of the Second Circuit mandates a finding that no such claim may lie against Respondents here. In addition, the question presented by Petitioner for review is whether the Condominium Act is "a valid law to be enforced by the Courts." (Pet. at i). There is no underling decision, however, questioning the validity of the Condominium Act. Rather, the District Court and the Second Circuit have determined that the Condominium Act has no application to the facts of this case. Because this is the only question presented by Petitioner before this Court, her petition should be denied.

I.

PETITIONER'S CLAIMS OF A VIOLATION OF THE CONDOMINIUM AND COOPERATIVE CONVERSION PROTECTION AND ABUSE RELIEF ACT WERE NOT OVERLOOKED OR IGNORED BY THE DISTRICT COURT AND THE SECOND CIRCUIT

As part of the questions presented for review by this Court, Petitioner alleges that the District Court and the Second Circuit did not address her claims of violations of the Condominium and Cooperative Conversion Protection and Abuse Relief Act, P.L. 96-399, 15 U.S.C. § 3601, *et seq.* (the "Condominium Act"). Petitioner incorrectly interprets the courts' silence on this issue as meaning that the allegations were not addressed. The fact that the courts below did not discuss every argument alleged by Petitioner does not mean that these arguments were overlooked or "ignored". (Pet. at 2).

Although the Petitioner's claim regarding the Condominium Act was not properly before the courts because it was not asserted as a cause of action in the Complaint and because Petitioner never sought to amend the Complaint to include such a claim, it was nonetheless addressed by Respondents in their papers because a *pro se* plaintiff's complaint is entitled to the most generous reading possible. Both the District Court and the Second Circuit were therefore fully briefed on the relevant issues (or lack thereof) and both Courts, after evaluating these contentions as well as the others alleged, chose to deny Petitioner's claims as a whole.

II.

EVEN IF THE COURTS BELOW DID NOT ADDRESS THE CONDOMINIUM ACT, IT DOES NOT APPLY IN THIS CASE AND HAS NOT BEEN VIOLATED

Petitioner claims that Respondents violated the Condominium Act because: (i) EOR (the entity that purchased the unsold condominiums after a foreclosure sale) elected to appoint its representatives Sheifetz, Cassuto and Penny to the Condominium's Managing Board (Pet. at 34-35); and (ii) because the Condominium Act defines condominium association as "the organization, whose membership consists exclusively of all of the unit owners in the condominium project, which is, or will be, responsible for the operation, administration, and management of the condominium project," 15 U.S.C. § 3603(4), the presence of the Sponsor's representatives on the Board in accordance with the offering plan somehow forms a basis for a claim.

Petitioner's arguments were properly rejected. As discussed below, the Condominium Act does not prohibit a sponsor from appointing its representatives to the condominium's managing board in accordance with the condominium's offering plan, until the last condominium is sold. Moreover, with respect to Petitioner's second point, and as explained in Respondents' submissions below, EOR was the owner of all of the unsold condominium units, was a "unit owner" within the meaning of 15 U.S.C. § 3603(4) and was entitled, under both the Condominium Act and the offering plan, to sit on the Board until the last unit was sold. Significantly, EOR was not even named as a defendant in this action. Having now had three bites at this apple, in the New York City Civil Court, the District Court, and the Second

Circuit, Petitioner has now, for the fourth time, failed to show how the Board was illegal.

The stated purposes of the Condominium Act are to: (i) minimize the adverse impacts of condominium or cooperative conversions on housing opportunities of low income individuals, the elderly and the handicapped; (ii) assure that fair and equitable principles are followed in the establishment of condominium and cooperative opportunities; and (iii) to provide appropriate relief where long term leases of condominium or cooperative related facilities are determined to be unconscionable. 15 U.S.C. § 3601(b). Moreover, all four elements listed in § 3607(a) must be present for a condominium association to terminate self-dealing contracts. *Board of Managers of Charles House Condo. v. Infinity Corp.*, 21 F.3d 528, 532 (2d Cir. 1994) (For the contract to be terminable under the Condominium Act it must (1) provide for operation, maintenance or management of a condominium .. . (2) be between the unit owners or a condominium association and the developer or an affiliate of the developer; (3) have been entered into while such association was controlled by the developer through special developer control; and (4) must be for a period of more than three years).

The Condominium Act gives condominium unit owners, or a condominium association, the opportunity to challenge sweetheart deals that the developer entered into with the condominium association. *See e.g., Park South Tenants Corp. v. 200 Cent. Park South Assoc.*, 941 F.2d 112, 114 (2d Cir. 1991) (holding that the plain language of the Condominium Act awards a cooperative association the right to terminate so-called sweetheart leases within § 3607's two year window.) As such, the Condominium Act simply has no application to

Petitioner's claims against Respondents who are the former holder of the mortgage on the unsold condominium units. *Bleecker Charles Co. v. 350 Bleecker Street Apt. Corp.*, 327 F.3d 197 (2d Cir. 2003) (holding that to be terminable under the Condominium Act, the relevant contract must first provide for the operation, maintenance or management of the condominium, must be between the unit owners and the developer or an affiliate, must have been entered into when the developer controlled the condominium and must extend for more than three years); *2 Tudor City Place Assocs. v. Tudor City Tenants Corp.*, 924 F.2d 1247, 1251 (2d Cir. 1991) (holding that the Condominium Act allowed the tenants to terminate a garage lease with an affiliate of the developer); *Board of Managers of Charles House*, 21 F.3d at 533 (holding that the "termination provision of the Act was designed to prevent sponsors from binding *tenants* to long-term, self-dealing Leases.") (emphasis in original).

Thus, it is clear that the Condominium Act was meant to address developer self-dealing, and, accordingly, has no application to Petitioner's claims against Respondents. *See e.g.*, 15 U.S.C. § 3601(a)(3) ("Congress finds and declares that ... certain long-term leasing arrangements for recreation and other condominium-or cooperative-related facilities which have been used in the formation of cooperative and condominium projects may be unconscionable"); *Board of Managers of Charles House Condo.*, 21 F.3d at 531 ("By enacting § 3607, Congress established a non-judicial remedy for condominium associations and unit owners to terminate long-term self dealing contractual arrangements.")

In any event, claims under the Condominium Act may only be brought where "the owners of two-thirds of the units

other than those owned by the developer or its affiliates . . . vote for termination," *Bleecker Charles Co.*, 327 F.3d at 199, and not by a single unit owner as in this case.

Additionally, the mere fact that certain current or former employees of the Bank are principals of EOR, does not allow Petitioner to impose liability on either the Bank or these individuals for EOR's conduct. *Freeman v. Complex Computing Co.*, 119 F.3d 1044, 1053 (2d Cir. 1997) (holding that the corporate veil cannot be pierced "in the absence of a showing that this control was used to commit [a] wrong, fraud, or the breach of a legal duty, or a dishonest and unjust act in contravention of plaintiff's legal rights, and that the control and breach of duty proximately caused the injury complained of.") Accordingly, because Petitioner has not stated a cognizable claim for relief under the Condominium Act against the Bank or the individual employees, this Court should deny its petition.

Should Petitioner wish to attempt to challenge the validity of any lease or other contract or agreement between the Sponsor and the condominium association as "unconscionable" she is, of course, free to do so. However, it is clear that the allegations contained in the Complaint fall well short of the conduct regulated by this statute, therefore the Condominium Act has not been violated as it is not applicable to this case. *See e.g.*, *Coliseum Park Apartments Co. v. Coliseum Tenant Corp.*, 742 F. Supp. 128 (S.D.N.Y. 1990); *Bleecker Charles Co.*, 327 F.3d 197; *Board of Managers of Charles House Condo.*, 21 F.3d 528.

Lastly, to the extent that Petitioner is seeking to use § 3607 of the Condominium Act to terminate any lease or other contract entered into between the condominium and

the Sponsor, this claim is time barred by the two-year limitations period contained in that section. 15 U.S.C. § 3607(b). To the extent that Petitioner is seeking any other relief under the Condominium Act, those claims are likewise time-barred by that statute's catchall six-year limitations period. 15 U.S.C. § 3613. Because EOR became the Sponsor on or about August 7, 1996 and Petitioner did not commence this action until more than six years after that date, their Condominium Act claim would, in any event, be time-barred.

III.

THE PETITION FOR CERTIORARI SHOULD BE DENIED BECAUSE THERE IS NO UNDERLYING DECISION INVALIDATING THE CONDOMINIUM ACT

The question presented by Petitioner for review by this Court is whether the Condominium Act is a "valid law[] to be enforced by the courts" (Pet. at i). Petitioner seems to misapprehend that there is no question about whether or not the Condominium Act is a valid law. There is no underlying decision anywhere which holds that the Condominium Act is invalid. The issue here is not whether the Condominium Act is valid, but rather if the Condominium Act was violated.

In its August 3, 2004 decision, the Second Circuit denied all of Petitioner's motions and dismissed their appeal stating that it lacked "an arguable basis in law or fact." Citing 28 U.S.C. § 1915(e)(2)(B)(i) as well as *Neitzke v. Williams*, 490 U.S. 319 (1989), the Court properly concluded that Petitioner's case was frivolous or malicious and should be dismissed. As this Court explained in *Neitzke*, 28 U.S.C. § 1915 "accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but

also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." *Id.* at 327. In denying Petitioner's claims, the Court implicitly stated that the Condominium Act did not apply to this case and was not violated.

The Condominium Act addresses long-term self-dealing contractual arrangements entered into by a condominium sponsor. Thus the act was designed to allow a condominium association or a group of unit owners to terminate certain self-dealing contracts entered into by the sponsor during the period of its control of the condominium. This statute thus has no application to Petitioner's claims that Respondents somehow acted improperly when EOR, as an owner of unsold condominium units, appointed certain of its employees to the Board in accordance with the terms of the offering plan. Because the Second Circuit did not in anyway hold that the Condominium Act is "invalid," Petitioner's application for a determination as to the validity of the Act has no merit.

CONCLUSION

For the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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